IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

WP(C).No. 12805 of 2004(Y)

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PETITIONER:

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A.ABDULLA HAJI S/O. YOUSAF,
KHADHEEJA MANZIL, NALAM VEEDU ROAD,
KASARAGOD DISTRICT.

BY ADV. SRI.A.K.ABDUL AZEEZ

RESPONDENTS:

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1. ADDITIONAL SALE TAX OFFICER,
KASARAGOD DISTRICT.

2. SPL.DEPUTY TAHSILDAR,
REVENUE RECOVERY NO.1, KANNUR.

3. APPELLATE ASSISTANT COMMISSIONER
OF AGRICULTURAL AND SALE TAX (COMMERCIAL TAX),
KANNUR.

4. THE SALE-TAX APPELLATE TRIBUNAL,
ADDL.BENCH KOZHIKODE.

5. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

6. C.ABOOBACKER, S/O. ABDULLA,
POVVAL, MULIYAR POST, KASARAGOD.

7. A.MAMMO S/O. YOUSAF, 'AMINA MANZIL',
PUTHIYANGADI, MADAYI POST, KANNUR DISTRICT.

8. C.ABDULLA, M/S. TATSTE UP SOFT DRINKS,
CHENGALA, KASARAGOD.

9. CHERUKKALAM ABDULLA,
M/S.TATSTE UP SOFT DRINKS, CHENGALA, KASARAGOD.

R1 TO R5 BY G.P. SRI. K.P. PRADEEP
R9 BY ADV. SRI.M.RAMESH CHANDER
R6 BY ADV. SRI.P.K.ABOOBACKER(EDATHALA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOSTAT COPY OF THE OBJECTION DATED 15.12.1997

EXT.P2 PHOTOSTAT COPY OF THE ASSESSMENT ORDER DATED 16.12.97

EXT.P3 PHOTOSTAT COPY OF THE DECISION 2000 (8) KTR 21 (KER.)

EXT.P4 PHOTOSTAT COPY OF THE 2ND APPEAL DATED 23.8.2000

EXT.P5 PHOTOSTAT COPY OF THE DEMAND NOTICE DATED 14.11.2003

EXT.P6 PHOTOSTAT COPY OF THE JUDGMENT IN WPC 40863/2003

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

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W.P.C. NO. 12805 OF 2004

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Dated this the 19th day of December, 2007

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of arrears of sales tax on the ground that recovery is not being initiated against other partners of the firm, namely, respondents 6 to 9. Government Pleader submitted that petitioner himself is the Managing Partner on record. In any case, there is no need for this Court to consider the objection of the petitioner because Section 21 of the Act authorises recovery from the partners jointly and severally. However, on equitable ground, there will be direction to the second respondent to proceed for recovery as far as possible against all the partners equally or in proportion to their shares if the records show the same. In any case full amount should be recovered from all the partners or any partner, whoever has assets. If the partners have any dispute among themselves, it is to be settled in civil court. Petitioner can furnish copies of partnership deed and details of assets of other partners to the Tahsildar for him to proceed for recovery on proportionate basis as directed above.

W.P. is disposed of as above.

(C.N. RAMACHANDRAN NAIR)
Judge